United States Postal Service *and* American Postal Workers Union, AFL–CIO, Atlanta Metro Area Local. Case 10–CA–32518(P)

August 21, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND ACOSTA

On July 18, 2001, Administrative Law Judge Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.[2]

This case involves access to the Respondent's property by both employees and nonemployees for the purpose of engaging in union solicitation. At the time of the events alleged in the complaint, the Union already represented the Respondent's employees, but was seeking to organize drivers employed by Mail Contractors of America (MCOA), a company that provides mail hauling services to the Respondent on a contract basis. Three persons sought access to a room on the Respondent's premises known as the "contract drivers' lounge" in order to solicit MCOA drivers.[3] Those three persons were Joe Johnson, an off-duty employee of the Respondent; Will Hardy, an off-duty MCOA employee; and Lyle Grimes, a union organizer who was not employed by the Respondent or MCOA. The judge found that the Respondent violated Section 8(a)(1) by denying all three of them access to the lounge. For the reasons stated below, we find that the Respondent violated Section 8(a)(1) by denying access to Johnson, but not by denying access to Hardy and Grimes.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to conform to our findings. In addition, we shall substitute a new notice to conform to our findings and our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

[3] The judge's decision sometimes refers to the MCOA drivers as "HCR drivers" and the lounge as the "HCR lounge."

I. FACTS

A. The Contract Drivers' Lounge

The lounge is located inside the fenced premises of the Respondent's Atlanta Bulk Mail Center (BMC). The Respondent provides the lounge for use by MCOA drivers, as well as drivers employed by the Respondent's other contractors.[4] Drivers come to the lounge to pick up and drop off paperwork before and after a driving route. They also use the lounge to sit down, talk, and relax while waiting for their paperwork to be ready or their trucks to be loaded. MCOA drivers come to the lounge and the BMC regularly, but do not work there exclusively. MCOA has its own terminal about one-half mile from the BMC.

B. Events of June 20 and June 21, 2000[5]

On the evening of June 20, Johnson, Grimes, and Hardy went to the contract drivers' lounge. They talked to MCOA drivers and handed out authorization cards for about an hour and a half, until one of the Respondent's supervisors came into the lounge and asked them to leave.

The following day, after learning that the organizing team had been asked to leave the night before, Local Union President Ralph Brown called Jim Kelly, the plant manager of the Atlanta BMC. Brown told Kelly that the organizing team had been asked to leave the lounge the night before. Kelly said he would arrange for them to be able to return at noon that day. Through a series of phone calls that followed, however, Kelly learned that allowing access to the lounge would contravene a policy established by the Respondent's Southeast Area Office. Kelly told Brown that Kelly would have to follow the policy and therefore could not allow the organizing team access to the lounge.

The Southeast Area Office policy was contained in a "cc-mail" message distributed to Kelly and others by Jack Mitchell, the Respondent's contract transportation specialist. Although the Respondent could not locate and produce the message, Mitchell testified to its contents. He testified that the message stated, "that we were to remain neutral, that this was an effort by the Union to organize a private company that we had no say in, and we were not to aid them nor to hinder them . . . ." Mitchell further testified that he would have considered

[4] The parties stipulated that the contract drivers' lounge is available for both contract drivers and the Respondent's employees.

[5] All dates are in 2000 unless otherwise specified.

the Respondent to be aiding the Union if it allowed the organizers to use the lounge to solicit the drivers.[6]

C. Solicitation and Access Rules and Contractual Provisions

The Respondent maintains and posts a rule at the entrance to the BMC prohibiting commercial solicitation. The collective-bargaining agreement between the Respondent and the Union allows union solicitation "through employees employed by the Employer . . . in nonwork areas," but it does not address solicitation by nonemployees or by employees of others. The collective-bargaining agreement also contains a provision governing union access to the Respondent's property. It provides:

> Upon reasonable notice to the Employer, duly authorized representatives of the Union shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to the Collective Bargaining Agreement. There shall be no interruption of the work of employees due to such visits and representatives shall adhere to the established security regulations.

II. ANALYSIS

For the reasons stated below, we agree with the judge that the Respondent violated Section 8(a)(1) by denying access to its employee, Johnson. We do not agree, however, that the Respondent violated Section 8(a)(1) by denying access to Hardy and Grimes, who were not employees of the Respondent.

A. Employee Joe Johnson

It is well settled that employees may engage in protected union solicitation on the employer's premises during nonworking time unless the employer can show that prohibiting solicitation is necessary to maintain production and discipline. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 803–804 (1945). The Respondent's counsel admitted at the hearing that the Respondent had no objection to Johnson being in the contract drivers' lounge on the evening of June 20 after he had finished his shift. The Respondent argues, however, that the drivers being solicited were on working time while in the lounge, and therefore the Respondent could lawfully prohibit solicitation of them.[7]

We need not decide whether the drivers being solicited were on working time, because that was not the reason the Respondent denied access to Johnson to solicit them. Rather, the supervisor who asked Johnson, Grimes, and Hardy to leave the drivers' lounge testified that he did so because he did not think they had received "authorization" to be there. There is no evidence that the authorization was dependent upon whether the solicited employees were on their working time. Under these circumstances, we agree with the judge that the Respondent violated Section 8(a)(1) by denying Johnson access to the lounge. See *Saia Motor Freight Line*, 333 NLRB 784, 786 (2001) (employer violated Section 8(a)(1) by warning employee for soliciting; although solicitation was during working time, the warning was issued for soliciting in general, not for soliciting on working time).

B. Nonemployee Union Organizer Lyle Grimes and MCOA Employee Will Hardy

We disagree with the judge that the Respondent violated Section 8(a)(1) by denying nonemployee union organizer Lyle Grimes and MCOA employee Will Hardy access to the lounge to solicit the MCOA drivers. In doing so, we find that the judge erred in concluding that the Respondent's denial of access discriminated against union solicitation. We also reject the Union's argument that its collective-bargaining agreement with the Respondent gave Grimes and Hardy a right of access to the lounge to solicit the drivers.

1. Applicable legal standards

As stated above, under *Republic Aviation*, employees may engage in protected solicitation on the employer's premises on nonworking time, unless the employer can show that prohibiting solicitation is necessary to maintain production and discipline. However, the Supreme Court has recognized a distinction "of substance" between the rights of employees and those of nonemployee union organizers. *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 113 (1956). The distinction is that employees are not strangers to the employer's property, but are already rightfully on the property pursuant to their employment relationship, thus implicating the employer's management interests rather than its property interests. See *Eastex, Inc. v. NLRB*, 437 U.S. 556, 571–573 (1978); *Hudgens v. NLRB*, 424 U.S. 507, 521 fn. 10 (1976). In contrast to employees, nonemployees may be treated as trespassers. An employer's refusal to allow nonemployee organizers onto its property to solicit will not violate Section 8(a)(1) unless the organizers have no reasonable nontrespassory means to communicate their message or the employer discriminates against the union by allowing other solicitation. See *Lechmere, Inc. v. NLRB*,

[6] Witnesses gave varying descriptions of the content of the cc-mail message containing the Southeast area office policy. We give primary weight to Mitchell's testimony, because he drafted the message.

[7] Chairman Battista notes that off-duty employees can be denied access to the interior of the facility where they work. *Tri-County Medical Center*, 222 NLRB 1089 (1976). However, the Respondent does not rely on this right to exclude.

502 U.S. 527, 533–534 (1992); *Babcock & Wilcox*, above at 112–113.

In this case, we find the principles of *Lechmere* and *Babcock & Wilcox* applicable to both Grimes and Hardy. Grimes is not employed by the Respondent or MCOA, and therefore is unquestionably a "nonemployee" whose access rights are governed by *Lechmere* and *Babcock & Wilcox*. Hardy was employed by MCOA, the Respondent's contractor. The Board has recognized a limited exception to *Lechmere* and *Babcock & Wilcox* for employees of a respondent's contractor who work "regularly and exclusively" on the respondent's premises. Such employees enjoy the same access rights as the respondent's employees. See *New York New York Hotel & Casino*, 334 NLRB 762 (2001), enfd. denied and remanded 313 F.3d 585 (D.C. Cir. 2002); *Gayfers Department Store*, 324 NLRB 1246, 1250 (1997); *Southern Services*, 300 NLRB 1154 (1990), enfd. 954 F.2d 700 (11th Cir. 1992).[8] In the present case, we assume that Hardy, like other MCOA drivers, worked "regularly" on the Respondent's premises. Therefore, to determine what legal standard governs his access rights, the only remaining issue is whether he worked there "exclusively." We find that he did not. It is undisputed that MCOA has its own facility about one-half mile from the Respondent's BMC. MCOA drivers begin and end their routes at the MCOA facility, which has its own break area. When performing runs that served the BMC, Hardy, like other MCOA drivers, went to the BMC to pick up and drop off paperwork and to pick up his driving loads. Under these circumstances, Hardy did not work "exclusively" on the Respondent's premises, and his access to the Respondent's property, like Grimes's, is governed by *Lechmere*.[9]

Our dissenting colleague dismisses the Board's "regularly and exclusively" language as dicta and finds that Hardy had the same access rights enjoyed by the Respondent's employees. We do not agree. In *New York New York Hotel*, *Gayfers*, and *Southern Services*, the Board emphasized and relied on the fact that the contractor's employees worked both regularly and exclusively on the respondent's premises. See *New York New York Hotel*, supra at 955 (individuals who do not work regularly and exclusively on the employer's property may be treated as trespassers, but contractors' employee in that case did "work regularly and exclusively in the Respondent's facility," and "such off-duty employees may engage in protected solicitation and distribution in nonwork areas of the owner's property . . ."); *Gayfers*, supra at 1250 (observing that contractor's employees report only to respondent's premises; finding that "[*b*]*ecause* [the contractor's employees] work exclusively and regularly at Gayfers, they were not 'strangers' to the Respondent's property . . .") (emphasis added); *Southern Services*, supra at 1154 (defining the issue as "the appropriate legal standard to be applied when employees who regularly and exclusively work on the premises of an employer other than their own distribute union literature to fellow employees . . ."). See also *Southern Services, Inc. v. NLRB*, 954 F.2d 700 (11th Cir. 1992) (enforcing Board's Order "because Coca-Cola's plant is the exclusive workplace of the SSI subcontract employees . . .").

Acknowledging that Hardy reports to MCOA's own facility as well as the Respondent's BMC, our colleague nevertheless concludes that Hardy works "exclusively" at the BMC because MCOA performs mail hauling services only for the Respondent. We disagree. The fact that the property owner may be the only beneficiary of the contractor's services is not dispositive. According to the language of the above cases, the issue is whether the contractor's employees work regularly and exclusively *on the premises* of the property owner. Hardy and the other MCOA employees, who began and ended their routes at MCOA's own nearby facility, did not work "exclusively" at the BMC. Our dissenting colleague says that Hardy works "exclusively" for the Respondent at the BMC facility. This is true in the sense that he performs his services for no other companies. However, the "exclusivity" language clearly refers to the *locus* of the work place rather than to the customer for whom the contractor works. As the test is framed in *New York New York Hotel*, "employees of a subcontractor of a property owner who work regularly and exclusively *on the owner's property* are rightfully on that property pursuant to the employment relationship." (Emphasis added.) In the instant case, Hardy works at the BMC site *and* at his em-

[8] In *New York New York Hotel*, the employees at issue worked in restaurants and eateries located within a casino owned by the respondent. 334 NLRB 762. In *Gayfers*, the employees worked for the respondent's electrical contractor and reported only to the respondent's jobsite. 324 NLRB at 1250. In *Southern Services*, the employees performed janitorial work for a subcontractor of Coca-Cola, exclusively at Coca-Cola headquarters. 300 NLRB at 1154. Therefore, in each case, the subcontractor's employees worked regularly *and* exclusively on the property owner's premises.

[9] The U.S. Court of Appeals for the District of Columbia Circuit recently remanded *New York New York*, supra, to the Board. See 313 F.3d 585 (D.C. Cir. 2002). The court found that the Board's decision in *New York New York* failed to provide an adequate rationale for giving the contractor's employees the same access rights as the property owner's employees. See id. at 588. We do not pass on the issues raised by the court's remand. Rather, assuming arguendo that the Board adheres to its prior view, with supporting rationale, that would not give access to the contractor's employee here. As shown below, that employee (Hardy) does not work exclusively on the Respondent's property.

ployer's site.[10] And, as discussed above, he is free to engage in Section 7 activity at his employer's site.[11]

Our decision is consistent with the principle, stated by the Supreme Court, that the workplace is a "particularly appropriate place" for Section 7 activity. *Eastex*, supra at 2517; *Southern Services v. NLRB*, supra at 704. When employees work regularly and exclusively on the premises of another employer, there is no other place at which they can exercise their Section 7 rights. See *Southern Services v. NLRB*, supra at 704 (Coca-Cola's complex was the contractor's employees' "exclusive workplace, and provided the only practical site" for them to discuss union organization). Under these circumstances, the Board and courts have recognized a narrow exception—applied in *New York New York Hotel*, *Gayfers*, and *Southern Services*—to the general rule that an employer may prohibit Section 7 activity on its premises by persons other than employees. When employees have a work situs provided by their own employer, however, there is no need for such an exception. These employees can engage in Section 7 activity on their own employer's premises, which, in the present case, was less than a mile from the Respondent's BMC. Consequently, in this case, we find that Hardy's right of access to the Respondent's BMC is governed by the general rule of *Lechmere* and *Babcock & Wilcox*. Therefore, we disagree with our colleague's position that Hardy, an MCOA employee, was entitled to the same access rights as the Respondent's own employees.

2. The General Counsel did not prove that the Respondent discriminated against union solicitation

It is undisputed that the Union had reasonable alternative means to communicate with the MCOA drivers. Therefore, under *Lechmere* and *Babcock & Wilcox*, the Respondent's denial of access to Hardy and Grimes did not violate Section 8(a)(1) unless it was discriminatory. The judge found that the denial of access was discriminatory because, in his view, the Respondent allowed other types of solicitation in the lounge and elsewhere in the BMC, but its Southeast area office policy disallowed access solely for the purpose of soliciting the MCOA drivers. We find the record insufficient to show such discrimination.

In denying access to Hardy and Grimes, the Respondent applied its Southeast area office policy. As Mitchell testified, the policy stated that the Respondent should neither aid nor hinder the Union's effort to organize the MCOA drivers, but instead should remain neutral. Mitchell stated that in his view, allowing the Union to use the drivers' lounge to organize the MCOA drivers would be contrary to this policy. As explained above, Hardy and Grimes had no inherent right to go onto the Respondent's premises. They had only the right to be free from union-related discrimination. Therefore, in order to show that the denial of access violated Section 8(a)(1), it was the General Counsel's burden to prove that the Respondent's Southeast area office policy prohibited union solicitation while the Respondent permitted other solicitation.

We find that this burden was not met, because the record does not show that the Respondent allowed other outside solicitation. The Respondent posted a sign at the entrance to the BMC prohibiting commercial solicitation. There is no evidence that management had ever been aware of, or permitted, solicitation of any kind in the contract drivers' lounge itself. The record evidence of outside solicitation elsewhere in the BMC prior to the incident in this case is limited to presentations relating to employee benefits. Specifically, witnesses referred to presentations made by two disability insurance providers.[12] We do not find these benefits-related presentations to be evidence of discrimination against union solicitation, particularly where the record fails to show that the permitted presentations were not related to the Respondent's "business functions and purposes." See *Lucile Salter Packard Children's Hospital v. NLRB*, 97 F.3d 583, 587–589 (D.C. Cir. 1996) ("no violation of section 8(a)(1) occurs if the solicitations approved by the employer relate to the employer's business functions and purposes," including informational solicitations relating to benefits that are part of employees' regular benefit package); *Rochester General Hospital*, 234 NLRB 253 (1978) (activities permitted by hospital were related to its community health care function and therefore were not evidence that the hospital disparately applied its no-solicitation rule).

Without evidence that the Respondent permitted other solicitation by nonemployees, we cannot conclude that the Respondent's Southeast area office policy, or its denial of access to the Union pursuant to that policy, was discriminatorily confined to Section 7 activity. Therefore, we cannot find that the Respondent violated Section 8(a)(1) by denying Hardy and Grimes access to the lounge to solicit the MCOA drivers.[13]

[10] We need not pass on the "truckdriver" example given by our colleague. Such employees may not have a fixed base to which they report. In the instant case, Hardy has such a base.

[11] There is an "employee break area" at his employer's site.

[12] The Respondent's plant manager also referred to "fund raisers for the employee welfare fund" having occurred in the BMC, but it is not clear that these activities involved solicitation by any nonemployees.

[13] In cases such as this one, in which an employer relies on its property rights to deny access to nonemployee union organizers, the em-

3. The collective-bargaining agreement's union access provision does not apply here

The Union argues that its collective-bargaining agreement entitles Hardy and Grimes access to the lounge. We disagree.

The provision relied on by the Union states, in relevant part, that union representatives "shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to the Collective Bargaining Agreement." The parties differ in their interpretations of this clause. The Union argues that the clause allows access for "official union duties" of any kind, even if they are not "related to the collective-bargaining agreement." In contrast, the Respondent interprets the clause to allow access only for "official union duties and business" that are "related to the Collective Bargaining Agreement." Under this reading, the provision would not cover access for the purpose of organizing employees of MCOA, because that activity is not related to the collective-bargaining agreement between the Union and the Respondent. The record does not support either interpretation over the other.

It was the General Counsel's burden to prove that the collective-bargaining agreement gave the Union's representatives a right of access to engage in the solicitation involved in this case.[14] Because the contract provision is ambiguous, and because the evidence does not preponderate in favor of the interpretation given by the General Counsel and the Union, we find that the General Counsel has failed to meet his burden. Accordingly, we do not find that the agreement gave Hardy and Grimes a right of access to the lounge to solicit the MCOA drivers.[15]

Therefore, we find that the Respondent did not violate Section 8(a)(1) by denying Hardy and Grimes access to the contract drivers' lounge.

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying its employees access to the contract drivers' lounge at the Atlanta, Georgia Bulk Mail Center to solicit on nonworking time on behalf of the American Postal Workers Union, AFL–CIO, Atlanta Metro Area Local, or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Bulk Mail Center in Atlanta, Georgia copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this Order.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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ployer must have a property interest sufficient to permit it to exclude others. See *Indio Grocery Outlet*, 323 NLRB 1138, 1141 (1997), enfd. sub nom. *NLRB v. Calkins*, 187 F.3d 1010 (9th Cir. 1999). The Union argues that the Respondent failed to establish such a property interest because the Respondent is a quasi-Governmental entity. We find no merit to this argument. We consider a quasi-Governmental entity (and for that matter a Governmental entity) to have the same property rights as a private party, in the absence of specific law to the contrary.

[14] *Western Tug and Barge Corp.*, 207 NLRB 163 fn. 1 (1973) ("The burden of establishing every element of a violation under the Act is on the General Counsel.").

[15] The Respondent attached an arbitration award to its brief in support of exceptions. The Respondent argues that the award supports its interpretation of the agreement. The General Counsel has moved to strike the award because it was not introduced in evidence at the hearing. The award was issued 10 years before the hearing. The Respondent referred to it for the first time in its brief in support of exceptions and gave no explanation for its failure to offer the award into evidence at the hearing. Therefore, we grant the General Counsel's motion to strike the award. See *Postal Service*, 306 NLRB 474 fn. 1 (1992) (granting motion to strike references to arbitration awards appended to party's posthearing brief; noting that awards were issued prior to the hearing but were not introduced into the record). Accordingly, we have not considered the award in analyzing whether the collective-bargaining agreement entitled Hardy and Grimes to access in this case.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

MEMBER WALSH, dissenting in part.

The Respondent ordered three Union organizers off its property, based on a "policy" that it would not permit organizing of its subcontractor's employees on its premises because to do so would indicate a lack of neutrality. The judge found that the eviction of all three organizers for this reason interfered with the rights of the subcontractor's employees under Section 7 of the Act. My colleagues disagree with the judge as to two of the organizers, on the grounds that one was not an employee of either the Respondent or its subcontractor, and that the other, though an employee of the subcontractor, did not work "exclusively" on the Respondent's premises. They find the 8(a)(1) violation solely as to one of the three organizers, on the grounds that he was an off-duty employee of the Respondent.

I would find the violation as to the employee of the subcontractor as well. The Supreme Court's decision in *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992), allows the Respondent to bar nonemployees from its premises except under very limited circumstances. The Respondent therefore did not violate Section 8(a)(1) by evicting nonemployee Union Representative Lyle Grimes from its property. Will Hardy, however, was not a stranger to the Respondent's property. He was an employee of Mail Contractors of America (MCOA), a company that provided mail hauling services to the Respondent at its Atlanta Bulk Mail Center (BMC). Along with Grimes and Joe Johnson, Respondent's own employee, Hardy was soliciting union authorization cards from other MCOA employees in the "contractors' lounge," which is located on the property of the BMC. This lounge was reserved for the use of MCOA employees and employees of other subcontractors of the Respondent. MCOA drivers utilized this lounge on a regular basis. They dropped off and picked up paperwork in the lounge, and they waited there while their trucks were being loaded. Hardy, Grimes, and Johnson talked to other drivers on or about the evening of June 20, 2000, while those drivers were waiting in the lounge at the Respondent's BMC. Hardy was off-duty at the time. The Respondent ordered all three of them to leave its premises, and they did so.

The Board has clearly held that employees who work on the premises of an employer other than their own have the same access rights enjoyed by the employees of the owner of the premises. *New York New York Hotel & Casino*, 334 NLRB 762 (2001), enfd. denied and remanded 313 F.3d 585 (D.C. Cir. 2002); *Gayfers Department Store*, 324 NLRB 1246, 1250 (1997); *Southern Services*, 300 NLRB 1154, 1155 (1990), enfd. 954 F.2d 700 (11th Cir. 1992).[1] That is, the employer is not privileged to prohibit their protected solicitation and distribution activity unless it can justify the prohibition as necessary to maintain discipline and production. *Gayfers*, supra at 1249, citing *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945). My colleagues, however, assert that Hardy does not have these same access rights. They base this conclusion on dicta in the above-cited cases to the effect that an employee of a subcontractor is only protected if he works "regularly and exclusively" on the premises of the Respondent. *New York New York Hotel*, supra at 955; *Gayfers*, supra at 1250; *Southern Services*, supra at 1155. They assume that Hardy's employment requires him to be in the contractors' lounge at the BMC on a "regular" basis. They contend, however, that Hardy does not work "exclusively" at the Respondent's BMC because he also reports to an MCOA terminal which is located about a half mile away. Thus, they conclude that the Respondent was privileged to treat Hardy as a nonemployee trespasser, and thus it did not violate Section 8(a)(1) by evicting him from its premises.

I do not agree. In *New York New York Hotel*, the Board explained the distinction between employees who work "regularly and exclusively" on the premises of another employer, and those who do not, as follows:

> employees of a subcontractor of a property owner who work regularly and exclusively on the owner's property are rightfully on that property pursuant to the employment relationship, even when off duty . . . . By contrast, individuals who do not work regularly and exclusively on the employer's property, such as nonemployee union organizers, may be treated as trespassers, and are entitled to access to the premises only if they have no reasonable non-trespassory means to communicate their message . . . . A clear distinction exists between the Ark employees, who work regularly and exclusively in the Respondent's facility, and taxi and limousine drivers and other delivery personnel who visit that facility intermittently in the course of their employment. Contrary to the Respondent, nothing in this decision or in those on which it is based suggests that

[1] I recognize that the U.S. Court of Appeals for the District of Columbia Circuit recently remanded *New York New York* to the Board. See 313 F.3d 585 (D.C. Cir. 2002). The court found that the Board failed to provide an adequate rationale for giving the contractor's employees the same access rights as the property owner's employees. See id. at 588. As explained below, my position in the present case is rooted not in *New York New York*, a case in which I did not participate, but in my own independent analysis of the Act, its policies, and relevant Supreme Court decisions. Of course, on remand in *New York New York*, I may refine or supplement my position in response to the specific arguments made by the parties in that case.

> the Respondent would be required to allow such individuals to solicit or distribute handbills on its property.

New York New York Hotel, supra at 762 (citations omitted).

In no sense is Hardy like a taxi or limousine driver or other delivery person who visits the BMC only intermittently in the course of his employment. Such individuals do not work "exclusively" on the premises of the property owner because they also perform their services for other employers and individuals. Hardy, however, and the other MCOA drivers perform their mail hauling services exclusively for the Respondent. They therefore fit squarely within the rationale of the Board decisions which grant them the same access rights as the employees of the property owner. The fact that they also report to their own terminal has no bearing on those access rights. They are required to be on the Respondent's property, and in particular in its "contractors' lounge," on a regular basis because of their employment relationship, and they work exclusively for the Respondent, unlike taxi drivers or delivery persons, who also work for others. The Respondent was therefore not privileged to evict Hardy from its premises, where he had a right to be as an employee of its subcontractor, while he was engaged in the protected activity of soliciting support for the Union.

My colleagues have drawn an artificial distinction which has no basis in either reason or the case law. Hardy and the other MCOA drivers were required to be in the BMC contractors' lounge as a result of their employment relationship with a contractor that performs services exclusively for the Respondent. Their Section 7 rights should not be abridged simply because they also happen to report to another worksite in the course of that employment relationship. Such a distinction would effectively deny access rights to any truckdriver who was required to be on an employer's premises on a regular basis, since a truckdriver, by definition, spends a substantial amount of his or her working time on the road, and thus does not work "exclusively" on the physical premises of any employer. But if, as in this case, that truckdriver works for a subcontractor that exclusively provides its services to another employer, and if that truckdriver is required to be on that employer's premises on a regular basis, there is no logical reason why that individual should be treated any differently from an employee whose employment relationship requires him or her to be always physically present on the property. As in *New York New York Hotel*, *Gayfers*, and *Southern Services*, such employees should be accorded the same access rights as the employees of the property owner themselves.

I fully agree with my colleagues that the workplace is a "particularly appropriate place" for Section 7 activity. I find no basis, however, for their decision to limit that Section 7 activity to one situs. Citing *Lechmere*, supra, and *NLRB v. Babcock & Wilcox*, 351 U.S. 105 (1956), my colleagues state that the "general rule" is that an employer may prohibit nonemployees from engaging in Section 7 activity on its premises. In my view, the "general rule" is that employees rightfully on an owner's premises pursuant to the employment relationship may, during nonworking time, engage in union solicitation there. See *Southern Services*, supra at 1155 ("*Republic Aviation* governs solicitation and distribution by employees properly on company property pursuant to the employment relationship . . . . By contrast, *Babcock & Wilcox* . . . pertain[s] to situations in which strangers to the employer's property trespass to facilitate activity covered by Section 7 of the Act."). Where employees perform services exclusively for another employer and are required to be on that employer's premises on a regular basis pursuant to the work relationship, they should be able to engage in Section 7 activity there, as well as on their own employer's property.

My colleagues hold, and I agree, that the Respondent violated Section 8(a)(1) by evicting its own employee, Joe Johnson, from the contractors' lounge while he was soliciting for the Union. Will Hardy, as an employee of MCOA who was regularly required to be in the same location because of his employment relationship, enjoyed the same rights as Johnson. Accordingly, I would find that the Respondent violated Section 8(a)(1) by evicting Hardy as well.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT deny our employees access to the contract drivers' lounge at the Atlanta, Georgia Bulk Mail Center to solicit on nonworking time on behalf of the American Postal Workers Union, AFL–CIO, Atlanta Metro Area Local, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

UNITED STATES POSTAL SERVICE

Elaine Robinson–Fraction, Esq., for the General Counsel.
Bruce J. Jacobsohn, Esq., of Charlotte, North Carolina, for the Respondent.
Anton G. Hajjar, Esq., of Washington, District of Columbia, for the Charging Party.

DECISION

PARGEN ROBERTSON, Administrative Law Judge. This hearing[1] was held on April 19 and 20, 2001, in Atlanta, Georgia. All parties were represented and afforded full opportunity to be heard and to introduce evidence. Respondent, Charging Party, and General Counsel filed briefs. Upon consideration of the entire record and the briefs, I make the following findings. Respondent provides postal services for the United States and operates various facilities throughout the United States in the performance of that function. It has numerous facilities including the facility involved in this matter, which is in Atlanta, Georgia. The Union is a labor organization.[2]

I. THE UNFAIR LABOR PRACTICE ALLEGATIONS

The complaint alleged that Respondent unlawfully denied its employee and two others,[3] access to a break room for the purpose of engaging in Union organizing. Will Hardy testified that he was a truckdriver for Mail Contractors of America. Mail Contractors of America trucked mail for Respondent. On June 22, 2000,[4] while he was off duty, Hardy arrived at Respondent's bulk mail center around 9 p.m. with Ralph Brown who is the president of the local Union and Lyle Grimes.[5] Ralph Brown left and returned with a sheet for Hardy and Grimes to sign, "to go through the front entrance." The three of them entered a spin gate at the entrance of the bulk mail center and walked through the end of the bulk mail building to the break area for contract drivers. The break area is also used for dispatch purposes. Drivers drop off or receive documentation for trips while in the break room.[6] Hardy, Brown, Grimes, and Respondent employee Joe Johnson[7] talked to some 12 to 15 people[8] in the break room (also referred to as "contractors lounge"),[9] concerning the Union and had drivers sign Union authorization cards. Joe Johnson[10] joined Hardy and Grimes in the break room after 10:30 p.m. A postal service supervisor approached and asked them what they were doing there. Hardy testified that we "told him we was organizing, having drivers for Mail Contractors of America sign cards." The supervisor asked them to leave and they left the premises.[11]

Ralph Brown is the president of Local 32[12] of the Union and is on leave as an employee of the Respondent. Brown testified that since approximately February 2000, the Local has been trying to organize the Mail Contractors of America trucking company. On June 22, 2000, the Local engaged in organizational efforts in three different plants. Brown was at Respondent's bulk mail center with Hardy and Grimes, to try and organize Mail Contractors of America drivers. The three of them approached the window provided for access to the facility and Brown told the attendant that he was there as a visitor and that the people with him were also visitors. He signed the visitor's clipboard and wrote in that he was a union organizer.[13] Brown, Hardy, and Grimes walked into the bulk mail center and directly to the contract drivers' lounge area. Brown remained in the lounge from approximately 9 to 10 o'clock. While Brown was there Hardy and Grimes met with only Mail Contractors of America drivers and talked with those drivers about the Union's organizing efforts. Hardy and Grimes were still in the

[1] In its answer Respondent denied that the Union filed the charge in Case 10–CA–32518(P). The original charge, which was received in evidence without objection, showed that its attorney, Anton Hajjar, filed the charge on behalf of the Union. Hajjar was the attorney of record in these proceedings and was present throughout the hearing. Sec. 102.9 of the Board's Rules and Regulations states that a charge may be made by any person. Respondent offered no evidence in support of its denial that the Union filed the charge. I find that the Union was the charging party.

[2] Respondent's attorney stated on the record that it had no dispute but that American Postal Workers Union is a union and that Respondent engages in collective bargaining with that union. Moreover, Respondent had no dispute but that local unions act as agents of the American Postal Workers Union. The full record illustrated that the charging party is a labor organization.

[3] The complaint alleged that Respondent denied employee Joe Johnson, Mail Contractors of America employee Will Hardy and Union organizer Lyle Grimes access to a breakroom.

[4] There was confusion in the record as to whether the solicitation incident occurred on June 22 or June 20. R. Exh. 1 at the page dated June 20, shows that Ralph Brown and two or three others signed in at 9:10 p.m. on June 20. Regardless of whether June 20 or 22 was the actual date, it is apparent that the incident did occur around that time.

[5] Hardy identified Grimes as a Union representative.

[6] Will Hardy testified that upon entering the lounge a driver states which route he is scheduled. He then waits until his trip is called and he is given his paperwork where to pick up his trailer.

[7] As shown below Johnson did not arrive in the lounge until his shift ended and he left work at 10:30 p.m.

[8] On cross-examination, Hardy testified that not all the 12 to 15 people they talked to, were Mail Contractors of America drivers.

[9] Hardy testified that contract drivers used the break room for their own personal use including "such as offering mechanic work, selling things for their children such as candy, and giving out pamphlets also." He also testified that it is not unusual for drivers to play cards in the break room.

[10] Joe Johnson testified that he is an employee of Respondent and that he joined in the solicitation after he finished his shift at 10:30 p.m.

[11] Ralph Brown testified without dispute that the Union solicited cards among Mail Contractors of America drivers without incident, at the Atlanta main post office and the airmail center, on the same night they were at the bulk mail center.

[12] Brown testified that he is president of the Atlanta Metro Area Local APWU.

[13] Ralph Brown signed in R Exh. 1 for June 20, 2000, and wrote APWU to the right of his signature.

lounge speaking with drivers when Brown left and went into the bulk mail center cafeteria to address questions from his members.[14] He left the bulk mail center from there and went to the main post office.

The next day Brown received a phone call from Mark Dimondstein. Dimondstein is an organizer from the Union's national president assigned to work on the Mail Contractors of America campaign. Dimondstein told Brown that the team at the bulk mail center had been expelled from the center. Brown phoned Respondent's plant manager of the bulk mail center, James Kelly. Kelly told Brown that he was unaware of anyone being placed off the property and that he did not have a problem with the organizing at the bulk mail center especially if the organizing activity was going on around the city. Kelly told Brown that he would call down to the transportation center and clear it for the organizers to return at noon that day. Brown then received a call from Edward Howard who is the manager of the Transportation Network. Howard told Brown that Kelly had phoned to clear the drivers coming back at noon but that Brown might want to get back to Kelly. When Brown phoned Kelly, Kelly told him that it was all right for the organizers to return as far as he was concerned but that there was a policy from the area office, which he would support. Kelly told Brown to contact Dan Starnes.

Ralph Brown phoned and Dan Starnes returned the call. Starnes told Brown that there was nothing in black and white but that he felt it was illegal for the organizing effort to take place on the property. Starnes said that he saw a sign at the bulk mail center regarding organizing the Mail Contractors of America drivers and he told the supervisor manager that he "didn't think it was legal for that to take place on the property, and don't let it happen." Dan Starnes did not testify.

Respondent called its Contract Transportation Specialist Jack Mitchell. Mitchell works under the direct supervision of Dan Starnes. Mitchell testified that he received a complaint from David Bachman with Mail Contractors of America in early 2000 to the effect that one of their drivers had complained that union activities in the bulk mail center work area was interfering with him doing his job.[15] Mitchell instructed the transportation center supervisors at the bulk mail center, that they were to remain neutral in the Union's effort to organize a private company and that "we would have been aiding the Union in their efforts if we had allowed them to use a work area to recruit."[16] Edward Howard phoned Mitchell regarding union organizing in the contract drivers' area around June 20, 2000, and Howard told Mitchell that a supervisor had told the organizers to leave. Mitchell replied that was "good."

Edward Howard is the manger of transportation and networks at the Atlanta bulk mail center. Supervisor Mark Bounty phoned him on June 20, 2000. Bounty affirmed with Howard, instructions that union officials were not to be allowed in the truckers lounge area soliciting the drivers. Howard instructed Bounty to remove the organizers from the area. After discussing the matter with Plant Manager Kelly, Howard phoned Ralph Brown that the organizers would not be allowed to return. Mark Bounty testified in corroboration of Howard's testimony. He phoned Howard and told him there were union people in the "work area, lounge, work area." Howard told him that he should escort them out of the building.

II. FINDINGS

A. Credibility

Many of the material facts were not in serious dispute. There was a question as to whether the incident in the contract drivers' lounge occurred on June 20 or 22. I find that determination is not significant. The evidence shows without dispute that the alleged incident did occur on one of those two dates. I was impressed with the demeanor of all three of General Counsel witnesses and I credit their testimony.[17] I find that Will Hardy testified truthfully regarding the use of the contract drivers' lounge in view of his demeanor, his testimony and the full record.[18] Hardy credibly testified that drivers remained in the lounge for different lengths of time, which may vary from 5 to 35 minutes. Postal service employees loaded their trucks while the drivers waited in the lounge. The contract drivers were not permitted to roam around the bulk mail facility but were expected to remain in the contract drivers' lounge. It was not unusual for the drivers to play cards while in the lounge. Drivers offered to sell candy on behalf of their children and other drivers offered moonlight services as mechanics. People passed out religious pamphlets. Hardy admitted that the drivers he solicited may or may not have been actually working when he talked with them. I also credit testimony which shows that Supervisor Mark Bounty was told at the beginning of his shift that people were soliciting for the Union among the contract drivers, in view of Bounty's testimony that he phoned his supervisor before actually seeing the union solicitation and told his supervisor that that activity was occurring in work areas and the lounge. I credit the testimony of Will Hardy to the effect that Supervisor Mark Bounty told the organizers in the contract

[14] Apparently Brown was not interrupted in his activities at the bulk mail center. He did not learn that the others had been evicted from the contract drivers' lounge until the next day.

[15] This evidence shows only that Respondent received a report that a contract driver had complained about Union activity at the bulk mail center. It is double hearsay and not probative of whether any contract employee was actually interfered with during work by people organizing for the Union.

[16] Mitchell sent a cc-mail to the Bulk Mail Center, to the effect that Union organizing activity was prohibited among contract drivers in the center. Despite a request from the Union, Mitchell has been unable to locate a copy of that e-mail.

[17] Respondent argued that Will Hardy demonstrated bias in view of his having been discharged by Mail Contractors of America. Bias is generally described as "the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of against a party." *U.S. v. Abel*, 469 U.S. 45 (1984). Here there was no showing of bias regarding any party to the action. Nevertheless, even in consideration of possible bias in relation to an "interest" in the issues at bar [3A Wigmore, *Evidence* Sec. 945 (Chadbourn rev. 1970)], I am convinced that Hardy testified truthfully.

[18] Respondent offered testimony to the effect that Hardy did not work for Mail Contractors at the time of the union organizing incident but an objection to the testimony was sustained as being hearsay, and Respondent failed to prove that point.

drivers' lounge, that they were not allowed to solicit in that area and they were to leave. Initially Bounty testified in agreement with Hardy when he testified, "I asked them what they were doing there and they said they were there to talk to the drivers, ..." I do not credit the testimony of Mark Bounty that he asked the organizers if they had authority to be in that area.

B. Conclusions

General Counsel argued that Respondent engaged in unfair labor practices regarding restrictions as to access and solicitation. As shown above, there was an incident in Respondent's contract drivers'[19] lounge at the Atlanta bulk mail center around June 20 or 22, 2000. At least four people including Respondent employee Joe Johnson, former Mail Contractors of America employee Will Hardy, Local Union President Ralph Brown, and Union organizer Lyle Grimes were in the contract drivers' lounge area on one of those evenings soliciting Mail Contractors of America drivers for the Union. Supervisor Mark Bounty first checked with Edward Howard, manager of transportation and networks at the bulk mail center, regarding Respondent's policy, and then told the Union people they could not solicit in the lounge and directed them to leave the bulk mail facility. The credited evidence shows that Bounty evicted the organizers because Respondent had a policy against the Union engaging in organizing activities in that area. That policy had been instituted in the early 2000 after Respondent's officials received a report from one of its subcontractors, Mail Contactors of America, that one of their drivers had complained about union activities at the bulk mail center in Atlanta. Respondent Contract Transportation Specialist Jack Mitchell testified that the policy was instituted because the Respondent would have been "aiding the Union in their efforts if we had allowed them to use a work area to recruit." However, the record showed that other solicitation was permitted in the bulk mail center including the contract drivers' lounge. Additionally, Respondent's plant manager admitted that outside businesses have been permitted to solicit postal employees at the bulk mail center provided advance approval was granted. Also, at material times Respondent had a provision in its collective-bargaining agreement (R. Exh. 9, p. 143),

> The Union may, through employees employed by the Employer, solicit employees for membership in the Union and receive union dues from employees in non-work areas of the Employer's premises, provided such activity is carried out in a manner which does not interfere with the orderly conduct of the Employer's operation.

Respondent offered several matters in defense including evidence that the bulk mail center was a secure area; that the people involved in organizing activity in the contract drivers lounge did not follow proper procedure in entering the premises; and that the contract drivers lounge was a work area. Postal Inspector Jeff Simms testified about Respondent's security requirements especially those at the bulk mail center and its security requirements for contract employees. Access to the bulk mail center is limited and may require an electronic card. Simms was unsure as to Ralph Brown's entitlement to use an electronic card for admission to the bulk mail center, but he has recommended issuing cards to the union president. He testified that those cards should not be used for access to areas unless prior authorization has been given. Other evidence illustrated that no one with the Union made arrangements with management, before the initial organizing efforts in the contract drivers' lounge. However, the record also proved that authorization was not routinely required for union officials.

The record proved that Respondent's arguments were specious.[20] None of those matters had an impact on Respondent's refusal to permit access to its contract drivers in their lounge. Nor did any of those matters impact on Respondent prohibition against union solicitation in the drivers' lounge. The evidence is clear that the union organizers[21] including employee Joe Johnson were evicted from the contract drivers' lounge because Respondent had instituted a policy of prohibiting union solicitation of contract drivers on Respondent property, after it received notice of the Union's plan to organize contract employees. Supervisor Mark Bounty testified that he was told at the start of his shift that union people were in the work area.[22] Before visiting the contract drivers' lounge or seeing the "Union people," Bounty called his boss, Edward Howard. Bounty testified that he told Howard "there are Union people in the work area, lounge, work area, and he told me that they did not have his authorization to be there and that I needed to escort them out of the building." When Bounty went into the lounge he recognized only Joe Johnson as one of the union people.[23] Bounty asked the Union people what they were doing there and they replied, "they were there to talk to the drivers." Bounty told the union solicitors that they were not allowed to solicit in the contract drivers' lounge and he told them to leave.[24] Ed-

[19] The parties stipulated that the contract drivers' lounge is available for both contract drivers and Respondent's employees (Tr. 17).

[20] The full record illustrated that Respondent did not deny solicitation of contract drivers or access to the drivers' lounge because the lounge was a secure area, or because the organizers did not follow proper procedure in entering the bulk mail premises, or because the contract drivers' lounge was a work area. In fact the record shows those defenses did not occur to Respondent during material times. Even Respondent's witnesses demonstrated a belief that it was its new policy of restricting union campaigning among the contract employees that led to its alleged unlawful actions.

[21] This is not a situation where a distinction between employees and others is important. It is clear from the record that persons other than employees including persons affiliated with the Union, were granted access and permitted to engage in solicitation for reasons other than to organize the contract drivers [Cf. *Southern Services*, 300 NLRB 1154 (1990), enfd. 954 F.2d 700 (11th Cir. 1992); *Postal Service*, 318 NLRB 466 (1995)].

[22] However, Bounty's testimony regarding his phone call to Edward Howard illustrated that he was informed that the union organizing activity was in the contract drivers' lounge.

[23] Despite Respondent's argument, there was no issue as to whether all the union people were Respondent employees. By his own admission Bounty did not know who they were other than Joe Johnson and the record shows that factor never became an issue in Respondent's consideration of the matter.

[24] Here again the evidence shows that an argument made by Respondent in its brief was not supported by the evidence. Bounty's testimony, as well as the full record, proved that Respondent never consid-

ward Howard testified that he told Bounty to remove the union people. According to Howard, he had been told by Jack Mitchell to "not allow any Unionizing activity to take place among the HCR drivers."

The bulk mail center plant manager, Jim Kelly, phoned Howard the day after the organizers were evicted by Bounty. Howard told Kelly that the union people should not be allowed on the premises because of instructions from Respondent's southeast area[25] "that they was not to be allowed in the HCR[26] lounge to solicit the HCR drivers."

Respondent also argued that the Union did not give the Respondent advance notice of its intent to engage in activity in the contract drivers' lounge. The evidence does show that no prior arrangements were made with supervision before the union solicitors appeared at the drivers' lounge the first night.[27] However, as shown above, the record illustrated that the union was not routinely required to make prior arrangements and there were conversations between the Union and Respondent officials in an effort by the Union to set up further organizing activity at the drivers' lounge after the initial incident. Moreover, the record especially the testimony of Mark Bounty, Edward Howard, and Jack Mitchell illustrated that any effort by the Union to secure advance authority before the initial organizing incident, would have been unsuccessful.

I find that Respondent permitted other activities in the contract drivers' lounge including solicitation and that it permitted solicitation in other areas of the bulk mail center at a time when it specifically prohibited solicitation for the purpose of the Union organizing contract employees. The record evidence proved that the contract drivers' lounge[28] was, at most, a mixed-use area[29] (*United Parcel Service*, 327 NLRB 317 (1998)), where employees were permitted to solicit for matters other than the Union (*Saia Motor Freight*, 333 NLRB 929 fn. 2 (2001)). As shown above, Respondent even permitted Union solicitation including for membership and dues, in the bulk mail center provided that solicitation did not interfere with work. In that regard the solicited employees were organized. The contract drivers were not organized and the Union was trying to organize those contract drivers through the solicitation at issue. The lounge was the only nonwork or mixed use, area where contract drivers' were permitted in the bulk mail center (e.g., R. Exh. 5, p. 49).

In short, the evidence proved conclusively that Respondent prohibited the Union from engaging in any efforts to organize its contact employees, in its bulk mail facility. Other solicitation was permitted including solicitation by employees, contract employees and others. Even solicitation by the Union was permitted provided it did not involve the contract drivers. As to security, Respondent routinely permitted employees and others to enter its bulk mail facility. That privilege was extended to the Union as shown, for example, on Respondent's Exhibit 1 where Union President Brown signed the visitors' log on both June 20 and June 22.

There was no showing that anyone was restricted from the bulk mail center for union business except for union solicitation of contract drivers. In fact, as shown above, both the collective-bargaining agreement and a separate agreement signed by the Respondent and the Union in 1992 (CP Exh. 2), provided for access to postal installations by duly authorized representatives of the Union for the purpose of engaging in official union duties.

I find that Respondent enforced a recently instituted rule that discriminatorily prohibited anyone including its own employees, from soliciting for the Union among contract drivers at its bulk mail center (*Sandusky Mall Co.*, 329 NLRB 618 (1999); *Food Lion, Inc.*, 304 NLRB 602 (1992)), and that it discriminatorily prohibited access to the contract drivers' lounge, in order to prohibit union solicitation.

CONCLUSIONS OF LAW

1. United States Postal Service provides postal services for the United States and operates various facilities throughout the United States in the performance of that function. The Board has jurisdiction over the Respondent in this matter by virtue of section 1209 of the PRA.

2. American Postal Workers Union AFL–CIO, Atlanta Metro Area Local is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent by denying access and by prohibiting solicitation to the Union, to its facilities at the bulk mail center in Atlanta, Georgia, because of the Union's efforts to organize employees of its subcontractors, engaged in activity in violation of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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ered whether the union people had properly entered the drivers' lounge in accord with its security rules. The question before Respondent was a simple one. Bounty, Howard, Kelly, and Mitchell all testified to the effect that its recently implemented decision to prohibit union solicitation on its property among the contract drivers, was the determining factor in its decision to prohibit union solicitation in the drivers' lounge.

[25] Edward Howard testified that he received instructions from Jack Mitchell who is Respondent's contracting official for the Southeast area.

[26] Howard testified that HRC drivers are the contract drivers.

[27] As shown above the record shows that the union solicitors appeared at the bulk mail center, in the contract drivers' lounge on either June 20 or June 22, 2000.

[28] In Respondent's answer to the complaint, it alleged in affirmative defenses, that the lounge was "the break area for all the contract drivers to use during their breaks."

[29] As shown above the lounge was used for both work and nonwork activities. Contract drivers picked up papers regarding their assignments while in the lounge and they also talked with others, relaxed, played cards, and engaged in various soliciting activities, especially while awaiting their assignments.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist[30] therefrom and to take certain affirmative action designed to effectuate the policies of the Act.[31]

[Recommended Order omitted from publication.]

[30] A question may arise as to whether the remedy should extent to require Respondent to permit Union solicitation at the bulk mail center by anyone designated by the Union. I find that the record proved that it was Respondent's practice to permit Union representatives access to the facility for Union business. Therefore, the cease and desist order should include anyone designated by the Union as its representative without regard to whether that person is an employee of the Respondent.

[31] I am not persuaded that extraordinary remedies including an award of attorney's fees and costs are justified. Therefore, I reject Charging Party's request.